

January 13, 1992

CD-92-01(LDV)

Dear Manufacturer:

SUBJECT: Tier 1 Phase-in for Small-Volume Aggregated Firms

We recently issued the enclosed letter to Lamborghini regarding Tier 1 phase-in requirements. This letter is provided in the interest of informing all manufacturers certain aspects of the phase-in requirements for small-volume manufacturers that are ten percent or more owned by a large-volume manufacturer. If you have any questions regarding Tier 1 phase-in requirements, please contact your EPA certification representative.

Sincerely,

Robert E. Maxwell, Director
Certification Division
Office of Mobile Sources

Enclosure

0218h

AFMC:Ball:x8280:jh:x8467:2565 Plymouth Rd:01/13/92:CB#0218h

December 20, 1991

Michael Jay Grossman
Lamborghini
27 Jason Avenue
Great Neck, New York 11021

Dear Mr. Grossman:

This letter is in response to your recent questions concerning the aggregation of manufacturers' sales volumes for purposes of the phase-in of the Tier 1 standards. The Agency believes that it is important to maintain consistency between the small volume and Tier 1 regulations in the treatment of the term "manufacturer." Therefore, the Agency has determined that where ten percent or more of any small volume company is owned by a large volume manufacturer, the two companies may aggregate sales for purposes of determining compliance with the Tier 1 phase-in. Independent small volume manufacturers--those with less than ten percent ownership by any other party--are exempt from the Tier I requirements until the final year of the phase-in.

This is consistent with the small volume regulations promulgated in 1990 (55 FR 7178). As stated in the preamble to that rule, the Agency believes that small volume manufacturers with ten percent or greater ownership by another party have effectively established "a financial business link wherein each party could benefit from the other." However, EPA realizes that such companies, while deriving financial benefits that justify their treatment as large volume companies for certification procedures, may effectively have the same problems with a limited product line as a totally independent small volume manufacturer in meeting Tier 1 phase-in requirements. Since the sales of such manufacturers are aggregated with those of the parent company for determination of large volume status, it is consistent to also treat them as part of the parent company's sales for Tier 1 phase-in purposes.

In addition, as stated in the preamble to the Tier 1 final rule (56 FR 25724), the Agency has the authority to grant exemptions from the phase-in requirement under de minimus situations. For this reason, the Agency chose to exempt independent small volume manufacturers from the phase-in until its final year and incorporated this provision into the Tier 1 regulations (e.g., 40 CFR 86.094-8 (a)(1)(i)(B)(1)(iv)). Small volume manufacturers with ten percent or greater ownership by another party may face the same burdens meeting the Tier 1 requirements as true small volume companies, but without the allowance for exemption. Equity can be achieved for these companies without controverting the intent of the Tier 1 regulation or the statute by allowing their sales to be counted under the parent company for purposes of the phase-in.

In general, the Agency will assume that the entity applying for the certificate plans to comply with the phase-in independently, and enforcement actions may be brought against the certificate holder if such requirements are not met. However, where ten percent or more of a small volume manufacturer is owned by a large volume manufacturer, these companies may agree to aggregate their sales for purposes of the phase-in and make this agreement evident to the EPA through written statements from both parties. The Agency will then assume that the sales of the two companies are to, in aggregate, meet the phase-in requirements, and may bring enforcement actions against the parent company if such requirements are not met. In this specific case, EPA would aggregate the sales of Chrysler and Lamborghini for purposes of the Tier 1 phase-in if letters from both companies were included in Lamborghini's application for certification stating Lamborghini's agreement to be included as part of Chrysler's phase-in and Chrysler's acceptance of this responsibility and willingness to include Lamborghini sales in its totals. The Agency then would not expect Lamborghini to meet the phase-in requirements independently.

I believe that this addresses your questions regarding Lamborghini's responsibilities toward the phase-in of the Tier 1 standards. Feel free to contact Tom Ball of my staff at (313) 668-4280 if you have additional comments or questions.

Sincerely,

Robert E. Maxwell,
Director Certification Division

cc: Bontekoe (CB)
McLean (OGC)
Oif (MOD)
Ingersoll (Chrysler)